

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: January 14, 2008
TO: Low Income Housing Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: Proposed 2008 Regulation Changes: Responses to Comments Received

On November 21, 2007 the California Tax Credit Allocation Committee (TCAC) released proposed regulation changes for program year 2008. TCAC staff subsequently held four public hearings on the following dates:

- Los Angeles, Friday, December 7, 2007
- San Diego, Monday, December 10, 2007
- Sacramento, Tuesday, December 11, 2007
- Fresno, Wednesday, December 12, 2007
- Oakland, Friday, December 14, 2007

In addition, TCAC took written public comment through January 4, 2008. Fifty-three (53) individuals and organizations formally commented on the initial proposed changes. TCAC staff has carefully considered all comments received, and has finalized the recommendations to Committee for consideration and adoption on Wednesday, January 23, 2008.

Originally, staff proposed fourteen (14) substantive regulations changes. Pursuant to comments received, staff intends to recommend five (5) of the substantive changes as originally proposed, and seven (7) with revisions. Staff proposes holding two (2) originally proposed changes for further consideration for future changes.

Of the original ten (10) clarifying changes proposed, staff intends to recommend seven (7) as originally proposed, and two (2) with additional clarifications. Staff is withdrawing one (1) change originally viewed as clarifying pursuant to received comment.

Finally, in response to comments received, staff proposes two (2) new changes that would create internal regulatory consistency in one instance, and update an archaic reference in the other.

The status of the initially proposed changes is as follows:

Substantive Regulation Changes Recommended as Initially Proposed:

1. Implement a new methodology for establishing unadjusted basis limits, relying upon TCAC portfolio database, rather than HUD 221(d)(3) limits. **Section 10302(nn).**

Many commenters support the change, while a few do not. Under our most recently published limits that would result from this change, 41 of 58 counties (71%) see their limits go up relative to the current Section 221(d)(3) limits, while 17 counties' limits would go down. The vast majority of the changes are relatively small, except for San Francisco Bay area and coastal counties down to Ventura County, whose limits increase significantly.

Staff will recommend adopting the change as proposed, and will remain open to improvement over time. The proposed change is an improvement over the current system.

2. Reserve 9 percent credit for the full nonprofit set-aside, and deduct these reserved credits from the amount used to apportion among geographic regions. This would make credits available for nonprofit set-aside awards rather than drawing from the geographic region where the nonprofit sponsored project is proposed. **Section 10315(k).**

This change drew very little formal comment, and has wide support.

3. Eliminate the exception to discounting the third tiebreaker denominator by specified loans and equity contributions. **Section 10325(c)(12).**

This change was broadly endorsed by commenters. Several additional costs were suggested for elimination from the third tiebreaker's denominator, and staff will consider other items during 2008 for possible exclusion from the third tiebreaker in 2009.

4. Require that proposed General Partner or developer loans in the application be truly available and remain committed and delivered to the project. **Section 10325(f)(3).**

This change was broadly endorsed.

5. Implement a portfolio data-based method for establishing operating cost minimums for tax credit projects. **Section 10327(g)(1).**

The proposed change was broadly supported, with some commenters stating that the resulting minimums were too low, and some commenters arguing they were too high. A small number of commenters urged an exception system to accommodate truly efficient property managers. Existing exception provisions within the regulations will remain available.

Substantive Regulation Changes Recommended with Revisions:

1. Establish homeless assistance as the preemptive competitive priority within the 9 percent credit competition's nonprofit set-aside. The homeless assistance apportionment within the nonprofit set-aside would be discontinued. **Section 10315(b).**

Comments: Commenters expressed strong support for this change, and offered minor improvements to the proposed wording.

Revision: Go forward with change, adding new language regarding operating subsidies.

2. Regulate 9 percent re-syndications of existing tax credit projects by limiting sales prices and prohibiting acquisition basis. **Section 10322(k).**

Comments: This change drew numerous comments ranging from enthusiastic support to some opposition. Several commenters suggested amendments and changes of varying magnitude.

Revision: In light of pending applications preparing for round 1 of 2008, staff recommends the original restrictions with two exceptions: Single room occupancy (SRO) properties ineligible for tax exempt bond financing and properties within ten (10) years of their tax credit regulatory agreement's expiration.

3. Add three (3) additional means for obtaining sustainable building methods points, including by building to LEED standards. **Section 10325(c)(8).**

Comments: This change garnered broad support.

Revision: Go forward with the change with a minor edit clarifying the LEED reference.

4. Alter the 9 percent (9%) credit funding order within geographic apportionments to fund a single project in each region, then cycle back through the regions funding additional projects each cycle until the credits are exhausted per regulation. **Section 10325(d)(2).**

Comments: Commenters broadly endorsed this change, and suggested a helpful clarifying change.

Revision: Go forward with this change, clarifying that each region would have an initial project application, if any, before any region received a second award.

5. Raise rehabilitation standard by which developers garner larger developer fees in eligible basis. **Section 10327(c)(2)(B).**

Comments: This change received supporting and opposing comments. Two commenters opposing the change suggested that raising the current \$15,000 threshold to \$20,000 (rather than \$30,000) was reasonable.

Revision: Reduce the proposed increase from \$30,000 to \$20,000 per unit. This furthers the intent of the change, while avoiding an abrupt, large, disruptive increase.

6. Provide a basis limit boost for significantly exceeding State energy standards, and eliminate corrective basis limit boosts that currently offset the faulty 221(d)(3) based system. Establish a new boost for high-density infill projects, and establish a boost for 4 percent applicants who propose deeper income targeting and longer compliance periods. **Section 10327(c)(5).**

Comments: These changes elicited many, varied comments supporting, opposing, and suggesting modifications to the proposed language. The few

comments on the permissive boost for high energy-efficiency were supportive. Commenters generally found the high-density boost to be well-intentioned but inadequate to offset costs in higher-density infill projects. A significant constituency urged larger boosts for even deeper income targeting.

Revision: Go forward with the high energy-efficiency boost as proposed. Substitute a 10% boost to elevator-serviced properties for the high-density boost. Provide higher boosts for 4% deals providing extremely low-income units.

7. Limit to 50 percent of developer fee the amount of development costs an applicant may propose to defer. **Section 10327(d)(2).**

Comments: This change was broadly supported, with three opposing comments. One of the opposing commenters recommended acceding to other public funders' requirements where they conflict with TCAC's proposed limitations.

Revision: Go forward with change, but add language accommodating other public funding sources' requirements to defer a larger percentage.

Substantive Regulation Changes Withdrawn:

1. Extend date by which projects in master planned communities in newly developing areas must have amenities in place for competitive points. **Section 10325(c)(5)(A).**

Comments: While several commenters commended the intent behind the change, most commenters believe the proposed change would not be helpful. Two commenters opposed the accommodation to projects that do not have their amenities in place by project completion.

2. Simplify and tier basis limit boosts available for photovoltaic design features. **Section 10327(c)(5)(F).**

Comments: Comments were uniformly supportive of the policy intent behind defraying energy-generating improvements, but differed as to the proposed approach's effectiveness. Staff will continue working with interested parties for a consensus during 2008.

Clarifying Regulation Changes Recommended as Initially Proposed:

1. Cross-reference regulatory language permitting TCAC to adjust excessive figures within application down to program maximums, to no scoring benefit. **Section 10322(f).**
2. Delete application form requiring information regarding syndicators contacted for credit pricing. **Section 10322(h)(2).**
3. Delete "homeless assistance apportionment" reference from funding sequence discussion to maintain consistency with substantive change #2 below. **Section 10325(d)(1).**
4. Eliminate unnecessary application forms and submittals. **Section 10325(f)(6) and Section 10326(g)(5).**
5. Delete erroneous historic language describing the four percent (4%) plus State credit tiebreaker. **Section 10326(a).**

6. Clarify that seismic or environmental costs may warrant an increase in basis limits, rather than basis. **Section 10327(c)(5)(E).**
7. Clarify that cash flow after debt service is limited to the higher of the two stated standards, not both standards. **Section 10327(g)(7).**

Clarifying Regulation Changes Recommended with Revisions:

1. Correct reference to homeless assistance apportionment applications consistent with substantive to Section 10315(b) above. **Section 10315(g).**
2. Clarify that services contracts must be provided within the application, that points are available for direct client services, and that the service coordinator may be a social worker, along with a minor, clarifying wording change. **Section 10325(c)(5)(B).**

Clarifying Regulation Change Withdrawn:

1. Clarify that TCAC may fund up to 125 percent of a geographic apportionment when funding the highest-scoring application from that region. Thereafter, applications will be funded only when at least 50 percent of the requested amount of credits remains in the apportionment. **Section 10325(d)(2).**

Comments: One commenter stated that the 125 percent limit on regional awards was intended to be employed throughout the award process, and that is how the regulation currently reads. The current rule limits the amount of “over-allocating” that could occur within the regional award process.

Revision: The commenter’s point is well taken and staff no longer recommends the change. Staff will apply both the 125% rule and the 50% rule throughout the geographic apportionment process.

New Proposed Changes in Response to Comments Received

1. Amend threshold language requiring local government funding to include privately contributed land donated as a result of an inclusionary housing ordinance. **Section 10325(c)(7).**

This change would view local government funding in a manner consistent with how it is viewed competitively in Section 10325(c)(1)(C).

2. Update the archaic reference to the California Department of Mental Health’s Supportive Housing Initiative to the Mental Health Services Act. **Section 10325(f)(8)(F).**

This technical correction would correctly reference a successor State program.

Attachment